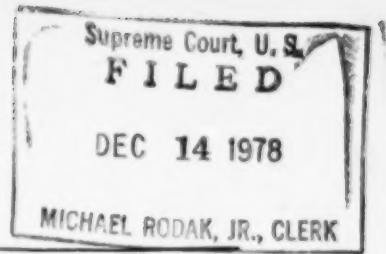


38-1225



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IN THE  
**Supreme Court of the United States**  
FEBRUARY TERM, 1979

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NO.

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ADINA ETKES,

Appellant,

VS.

BARTELL MEDIA CORPORATION  
and MACFADDEN-BARTELL  
CORPORATION,

Appellees.

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Appeal from Superior Court  
of Los Angeles County  
State of California

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JURISDICTIONAL STATEMENT

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ADINA ETKES  
Pro. Per.

7566 De Longpre  
Los Angeles, Cal. 90046  
(213) 876-7196

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## TABLE OF CONTENTS

	Page
Opinion Below.....	1
Jurisdiction.....	2
The Statutes Involved.....	2
Constitutional Provision.....	2
Questions Presented.....	3
Statement of the Case.....	4
The Questions Are Substantial.....	10
Conclusion.....	11
Appendix.....	infra

# TABLE OF AUTHORITIES

Cases:	Page
Baker v. Humphrey, 101 U.S. 494 (1879)	3, 10
Peck v. Tribune Co., 29 S. Ct. 554, 214 U.S. 185 (1908).....	3, 5, 6
White v. Nicholls, 44 U.S. 266 (1845)...	6, 7
Constitution and Statutes:	
United States Consitution, Amendment X:V	
Article 1.....	2, 3, 4, 10
28 U.S.C. § 1257(1).....	2
42 U.S.C. § 1983.....	2

## IN THE SUPREME COURT OF THE UNITED STATES February Term, 1979

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NO.

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ADINA ETKES,

Appellant,

VS.

BARTELL MEDIA CORPORATION  
and MACFADDEN-BARTELL  
CORPORATION,

Appellees.

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### JURISDICTIONAL STATEMENT

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### OPINION BELOW

The order of the Supreme Court of California denying a hearing, and other related orders, and opinion not published, are set forth in the appendix hereto.

## JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. Section 1257(1).

## STATUTE INVOLVED

42 U.S.C. Section 1983:

"Every person, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory, subjects, or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and Laws, shall be liable to the party injured in an action at Law, suit in equity, or other proper proceeding for redress "

## CONSTITUTIONAL PROVISION

ARTICLE 1 OF THE FOURTEENTH  
AMENDMENT TO THE CONSTITUTION  
OF THE UNITED STATES:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any Law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of Law, nor deny to any person within its jurisdiction the equal protection of the Law.

## QUESTIONS PRESENTED

1

WHETHER THE SUPREME COURT OF CALIFORNIA DENIAL OF A HEARING, AND THUS REDRESS, CONTRARY TO BAKER AND HUMPHREY, AND THUS CONTRARY TO THE FOURTEENTH AMENDMENT?

11

WHETHER THE SUPERIOR COURT OF LOS

ANGELES COUNTY FUNCTION HERE, WITHOUT JURY AND WITNESSES, IN DETERMINING LIBEL, CONTRARY TO PECK AND TRIBUNE COMPANY, AND THUS CONTRARY TO THE FOURTEENTH AMENDMENT?

#### STATEMENT OF THE CASE

Appellees publish a nationwide magazine Photoplay. Said magazine published a story concerning appellant and her son by actor Hugh O'Brian, whose legal name is Krampe, that is defamatory, distorted judicial proceedings, resorted to name calling, and fabricated falsehoods calculated to injure appellant and her son. When the magazine ignored her letter requesting a retraction, appellant sued its publishers.

The Photoplay story reached back several years to "report" on a paternity hearing, closed to the public and press, which they falsely claimed involved a long battle and a decision

that took the Court a week to arrive at, when in reality said hearing took about three hours and culminated in an immediate court's decision. Obviously, this was calculated to give the impression that appellant had a difficult time proving her cause in court. The story then attributes to appellant a statement she supposedly made to the press, which was never made by her, and is contrary to what she and the father said in court that their relationship began several years prior to the birth of their son. This is indicated in the court reporter's transcript which was ignored by Photoplay in their desire to fabricate their own details that would lead the readers to believe that appellant is a woman of easy virtue, and that her son was born out of moral turpitude. This is made clear when the story places appellant in the company of women who lost their paternity claims, and who by their own admission had

their children as a result of a fly by night encounter. Appellant has nothing in common with these women. Prior to the publication of the story, appellant enjoyed a good reputation and was considered a serious individual and concerned photographer. Thus she was badly injured. It is stated in *Peck v. Tribune Co.*:

"A publication cannot be held as a matter of law not to be libelous because it may not injure the plaintiff's standing with the general public, if it may injure her in the estimation of a considerable and respectable class of the community..... Therefore it was the plaintiff's right to prove her case and go to the jury." 29 S. Ct., 554, 214 U.S. 185 at 190.(1908)

The headline of the story brands appellant's son with a word that carries with it a lot of social stigma. To do so, they fabricated a headline: "Why has he kept his illegitimate

birth hidden all these years." His birth was never hidden. He was always known by his father's name. His birth certificate and school records attest to that. He was mentioned in print in a number of publications, prior to the Photoplay story, none of them resorting to name calling. This meets the definition of malice per se, as stated in *White v. Nicholls*:

"Every publication, either by writing, printing or pictures, which charges upon or imputes to any person that which renders him liable to punishment, or which is calculated to make him infamous, or odious, or ridiculous, is prima facie a libel, and implies malice in the author and publisher towards the person concerning whom such publication is made..... The jury, and the jury alone were to determine whether this malice did or did not mark the publication." 44 U.S. 266, at 291, 292. (1845)



There is more here than just malice towards appellant's son. Photoplay, by creating the false impression that appellant approved the story that defames her son, renders her odious, infamous and ridiculous.

Appellant had a good cause. It was baffling that respondents' demurrer was sustained without leave to amend, and that the appeal failed. Appellant's attorneys refused to ask the Supreme Court of California for a hearing.

It was about June, 1978 that appellant learned that her former attorneys should not have handled her case because of a conflict of interest. Marvin Mitchelson is and was the attorney for a woman who was an editor of the malicious story, Pamela Mason. He recently handled a case for her against Bank of America. Chase Morgan, who handled the appeal with Ronald Scheinman, was a student at Loyola University, at the time Paul Selvin, the other

side's attorney, was teaching there. It then became clear that Mitchelson dropped appellant's son's name from the law suit against Photoplay; in order to weaken it, he minimized the importance of the hearing on defendant's demurrer, in order to keep appellant away from it. He said nothing about the untimely demurrer, served later than the time allotted for its service under California law. Morgan and Scheinman, being familiar with the law, must have known about these irregularities, but kept mum, and followed in Mitchelson's footsteps in steering this good cause off course. Even the Court of Appeal's opinion is mostly a copy of defendant's demurrer, and extremely misleading, as is indicated in its summation (App. A-5) which reduces appellant's complaint to a mere desire 'not to want to see the details of the paternity hearing publicized in Photoplay'. As is clear from the complete Minutes of said Hearing (App. A-6)

which barely cover half a page of legal size stationery, it was very short and an easy victory for appellant and her son, contrary to what was reported in Photoplay. It is this distortion of judicial proceedings that appellant objects to, amongst other grievances against Photoplay magazine.

Appellant in her motion to the Court of Appeal, on July 14, 1978, to recall the remittitur, backed all her allegations with proof. Thus, the other side's attorney, Paul Selvin, should have answered them point by point. Instead, he wrote a letter to the presiding judge of the Court of Appeal, saying that he did nothing wrong. His letter is a fraud, for he knows that appellant's allegations are true and correct. The motion was denied a day later. This obvious discrimination is so unjustifiable as to be violative of the due process clause in the Fourteenth Amendment. It also

denies appellant the right to redress as stated in Baker v. Humphrey:

"A breach of duty on the part of an attorney is 'constructive fraud' and is sufficient, without actual fraud, to give the client a right to redress." 101 U.S. 494, at 502. (1879)

The matter and issues herein should be argued.

#### THE QUESTIONS PRESENTED ARE SUBSTANTIAL

As is indicated in the foregoing Statement of the Case, the Courts and attorneys involved here, have acted contrary to the Constitution of the United States, the Statutes, and decisions of this Court in similar cases. Should fraud and error be rewarded, or the remedy of redress applied, in accordance with the Authorities cited herein.



## CONCLUSION

For the foregoing reasons, Appellant Adina Etkes, urges this Court to note probable jurisdiction over this case, set the case for plenary consideration, and reverse the judgment appealed from.

Respectfully submitted,

ADINA ETKES

Pro. Per.

**APPENDIX**

## INDEX

	Page
Order of the Supreme Court.....	A-1
Order of the Court of Appeal.....	A-2
Order of the Superior Court.....	A-3
Opinion of the Court of Appeal.....	A-4
Minutes of Hearing.....	A-6
Notice of Appeal.....	A-7
Certification of Service.....	A-8

THE SUPREME COURT  
OF THE STATE OF CALIFORNIA

ADINA ETKES,	)	
Plaintiff and	)	
Appellant,	)	
VS.	)	2nd Civil
	)	No. 41940
BARTELL MEDIA	)	
CORPORATION, et al.	)	
	)	
Defendants and	)	
Respondents	)	
	)	
	)	

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ORDER  
Petition for hearing denied.

Dated: September 14, 1978.

No opinion was given.

COURT OF APPEAL  
SECOND APPELLATE DISTRICT  
STATE OF CALIFORNIA

ADINA ETKES,	)	
Plaintiff and	)	
Appellant,	)	
VS	)	2nd Civil
	)	No. 41940
BARTELL MEDIA	)	
CORPORATION, et al.	)	
	)	
Defendants and	)	
Respondents.	)	
	)	
	)	

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ORDER

Motion to recall remittitur denied.

Dated: July 21, 1978.

No opinion was given.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

Name of Judge, Honorable David Thomas

Cause No. C 30394      Date: Sept. 15, 1972

Title of Cause - Adina Etke vs. Bartell Media  
Corporation, et al.

Council for Plaintiff, Marvin M. Mitchelson.

Council for Defendants, Paul Selvin.

Brief Statement of Hearing - Hearing on De-  
fendants' demurrer to complaint.

ORDER: Defendants' demurrer is sustained  
without leave to amend.

COURT OF APPEAL

SECOND APPELLATE DISTRICT

STATE OF CALIFORNIA

Name of Presiding Judge, Otto M. Kaus.

Name of Justices, James Hastings and Clark E.  
Stephens.

Cause No. 2nd Civil No. 41940

Title of Cause - Adina Etke vs. Bartell Media  
Corporation, et al.

Council for Plaintiff and Appellant, Chase

Morgan and Ronald Scheinman.

Council for Defendants and Respondents, Paul  
Selvin.

Brief Statement of Cause - Appeal from

Superior Court of Los Angeles County

Hon. David Thomas, Judge.

OPINION of Court of Appeal, entered on April  
9, 1974, affirmed Judgment.

OPINION  
OF COURT OF APPEAL  
SECOND APPELLATE DISTRICT

Entered: April 9, 1974

(Last page)

While it is understandable that Etkes would not want the details of the paternity proceedings publicized in the movie magazine Photoplay, we do not believe, for the reasons stated, that she could state a cause of action for defamation or for invasion of privacy.

The judgment is affirmed.

Not for publication.

Hastings, J.

We concur:

Kaus, 'P. J.

Stephens, J.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES												DEPT. 11																													
Date: FEB 5, 1969		Hon. LESTER E. OLSON D. L. ARMSTRONG		Judge R. L. BARTLETT Deputy Sheriff C. AXTON		Deputy Reporter		If parties and counsel checked (if not, initial)																																	
D 78588		Counsel for Plaintiff		JACK DEANWAY		Counsel for Defendant		ZAGON, SCHIFF, HIRSON & LEVINE BY DAN MARK																																	
HUGH DONALD KRAMPE, A MINOR CHILD, BY ADINA ETRES, HIS GUARDIAN AD LITEM		VS		HUGH KRAMPE																																					
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NATURE OF PROCEEDINGS: PATERNITY TRIAL - TRANSFERRED FROM DEPARTMENT 8																																									
<p>ADINA ETRES AND HUGH DONALD KRAMPE ARE SWORN AND TESTIFY FOR THE PLAINTIFF. PLAINTIFF'S EXHIBIT #1 (CERTIFICATE OF BIRTH) IS ADMITTED IN EVIDENCE. DONALD KRAMPE IS SWORN AND TESTIFIES OUT OF ORDER FOR THE DEFENDANT. HUGH CHARLES KRAMPE IS SWORN AND TESTIFIES FOR THE PLAINTIFF UNDER SECTION 776 EVIDENCE CODE. THE PLAINTIFF AND DEFENDANT ARE OBSERVED BY THE COURT STANDING SIDE BY SIDE AND FACING THE COURT AT THE REQUEST OF THE PLAINTIFF. PLAINTIFF RESTS. MOTION OF THE DEFENDANT FOR JUDGMENT OF NON-SUIT IS DENIED. HUGH CHARLES KRAMPE TESTIFIES FOR THE DEFENDANT. DEFENDANT RESTS. ADINA ETRES IS RECALLED AND TESTIFIES FOR THE PLAINTIFF IN REBUTTAL. ALL REST. CAUSE IS ARGUED.</p> <p>THE COURT FINDS PURSUANT TO SECTION 632 C.C. THAT THE DEFENDANT HUGH KRAMPE IS THE FATHER OF THE MINOR CHILD PLAINTIFF HUGH DONALD KRAMPE. THE MATTER OF SUPPORT AND ATTORNEY FEES IS ORDERED TO STAND SUBMITTED.</p>																																									

IN THE COURT OF APPEAL  
SECOND APPELLATE DISTRICT  
STATE OF CALIFORNIA

ADINA ETKES,	)	
Plaintiff and	)	
Appellant,	)	
VS.	)	2nd Civil
	)	No. 41940
BARTELL MEDIA	)	
CORPORATION, et al,	)	
	)	
Defendants and	)	
Respondents.	)	
	)	
	)	

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NOTICE OF APPEAL

Notice is hereby given that ADINA ETKES, the plaintiff and appellant herein, hereby appeals to the Supreme Court of the United States from the final decree of this court, denying motion to recall remittitur, entered on July 21, 1978, a hearing on which was denied by the California Supreme Court on September 14, 1978.

This appeal is taken pursuant to Section 1257(1) of Title 28 of the U.S. Code.

Dated: December 2, 1978.

ADINA ETKES  
Pro. Per.

CERTIFICATION OF SERVICE

The undersigned, Adina Etkes, hereby states that copies of the foregoing Jurisdictional Statement were served by certified mail on Paul Selvin, the attorney for Bartell Media Corporation, et al, 1900 Avenue of the Stars, Suite 2400, Los Angeles, California 90067, and on Judge David Thomas, Los Angeles Superior Court, 111 N. Hill St., Los Angeles, California 90012.

ADINA ETKES  
Pro. Per.